

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

FEB 11 1993

DOCKET FILE COPY ORIGINAL

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Dennis Kelly, Esq.  
Cordon & Kelly  
Post Office Box 6648  
Annapolis, MD 21401

Donald E. Martin, P.C.  
2000 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

Dear Ms. Tobey and Messrs. Kelly and Martin:

This will respond to your joint request for refunds of the three hearing fees filed on behalf of ~~\_\_\_\_\_~~ Inc. ("BSCI"), ~~\_\_\_\_\_~~ Broadcasting, Inc. ("Phoenix"), and ~~\_\_\_\_\_~~ Two ~~\_\_\_\_\_~~, respectively, in connection with their competing construction permit applications for a new FM station at Chico, California.

You state that prior to the Notice of Appearance deadline, BSCI, Phoenix and NTSL filed a settlement agreement that reflected their merger. The merger has been approved, the contingent environmental issue has been deleted, and the merged application has been granted without hearing. See Memorandum Opinion and Order, FCC 92M-1045 (November 17, 1992).

Section 1.1111(c)(4) of the Commission's rules provides for refund of a hearing fee whenever applications are withdrawn pursuant to a settlement agreement, prior to the Notice of Appearance deadline, and the remaining application is immediately grantable. Under the circumstances, refund of the hearing fees is appropriate.

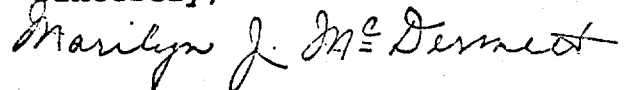
92-183 (

Ms. Tobey and Messrs. Kelly and Martin

2.

Accordingly, your request is granted. Checks on behalf of BSCI and Phoenix, made payable to the makers of the original checks and drawn in the amount of \$6,760.00 each, will be sent to the respective attorneys at the earliest practicable time. NTSL's had previously filed a separate refund request, which has already been granted. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

A handwritten signature in cursive script, reading "Marilyn J. McDermett". The signature is written in dark ink and is positioned above the typed name.

Marilyn J. McDermett  
Associate Managing Director  
for Operations

4011

RECEIVED

DEC 15 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM DOCKET No. 92-183
	)	
WESTERN INSPIRATIONAL BROADCASTERS,	)	File No. BPED-910923MF
INC.	)	
	)	
BROAD SPECTRUM COMMUNICATIONS, INC.	)	File No. BPH-910925ME
9203038170337003	)	
PHOENIX BROADCASTING, INC.	)	File No. BPH-910926ME
9203038170336001	)	
NINETY-TWO SEVEN, LTD.	)	File No. BPH-910926MF
9203048170338001	)	
For Construction Permit for New	)	
FM Broadcast Station on Channel	)	
224A at Chico, California	)	

TO: Office of the Managing Director

RENEWAL OF REQUEST FOR REFUND OF HEARING FEES

Broad Spectrum Communications, Inc. (BSCI), Phoenix Broadcasting, Inc. (Phoenix) and Ninety-Two Seven, Ltd. (NTSL), by their respective attorneys, hereby respectfully submit this Renewal of their Request for Refund of the Hearing Fees each of them paid to take part in the above-captioned proceeding. In support whereof, the following is shown:

1. BSCI, Phoenix and NTSL originally made a request for hearing fees on September 8, 1992, the date that their complete settlement package was filed with the Commission for consideration by ALJ Edward J. Kuhlmann.

2. On November 16, 1992, the Associate Managing Director for Operations wrote to BSCI, Phoenix and NTSL, holding that because ALJ Kuhlmann had not ruled on the

settlement papers, the "refund request is premature", and that the request was "denied without prejudice" to the request being resubmitted upon approval of the settlement by ALJ Kuhlmann (See Exhibit A). Public notice of this letter was given by the Commission on December 7, 1992.

3. As it turned out, on the very next day following the Associate Managing Director's letter, November 17, 1992, ALJ Kuhlmann released his "Memorandum Opinion and Order" granting all settlement requests made by the parties on September 8, 1992; to wit, the elimination of the ~~contingent~~ environmental issue, approval of amendments, approval of the settlement agreements, and grant of the application of Phoenix, as amended to specify a new corporate entity, Chico FM, Inc., which embodies the merger of BSCI, Phoenix and NTSL contemplated by the settlement agreements (See Exhibit B).

4. Therefore, BSCI, Phoenix and NTSL are entitled to respective refunds of \$6,760.00. This request for refund must therefore be granted.

WHEREFORE, it is urged that this Renewal of Request for Refund of Hearing Fees BE GRANTED IN FULL.

Respectfully submitted,

BROAD SPECTRUM COMMUNICATIONS,  
INC.

AKIN, GUMP, HAUER AND  
FELD, L. L. P.  
1333 New Hampshire Ave., NW  
Washington, DC 20036

By Margaret L. Tobey 10521  
Margaret L. Tobey  
Its Attorney

PHOENIX BROADCASTING, INC.

CORDON AND KELLY  
P. O. Box 6648  
Annapolis, MD 21401

By D. J. Kelly  
Dennis J. Kelly  
Its Attorney

NINETY-TWO SEVEN, LTD.

DONALD E. MARTIN, P. C.  
Suite 200  
2000 L Street, NW  
Washington, DC 20036

By Donald E. Martin 10522  
Donald E. Martin  
Its Attorney

December 15, 1992

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

NOV 16 1992

Margaret L. Tobey, Esq.  
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Donald E. Martin, P.C.  
2000 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

Dear Ms. Tobey and Messers. Kelly and Martin:

This will respond to your request for refund of hearing fee filed on behalf of Broad Spectrum Communications, Inc. ("BSCI"), Phoenix Broadcasting, Inc. ("Phoenix"), and Ninety-Two Seven, Ltd. ("NTSL") in connection with their construction permit applications for a new FM station at Chico, California.

You state that prior to the Notice of Appearance deadline, BSCI, Phoenix and NTSL filed a settlement agreement that reflected their merger and, if granted, would result in the grant of the Phoenix application. You also state that you have submitted all necessary amendments, and requested deletion of the contingent environmental issue specified against Phoenix.

Section 1.1111(c)(4) of the Commission's rules provides for refund of a hearing fee whenever applications are withdrawn pursuant to a settlement agreement, prior to the Notice of Appearance deadline, and the remaining application is immediately grantable. In the instant case, the settlement agreement is still under review, and the contingent environmental issue against Phoenix has not yet been deleted. See Order, FCC 92M-945 (Sept. 11, 1992). Therefore, although the settlement agreement was timely filed, the refund request is premature.

Ms. Tobey and Messers. Kelly and Martin

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Accordingly, at this time, we are unable to consider your request for refund and it must therefore be denied without prejudice. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,



Marilyn J. McDermott  
Associate Managing Director  
for Operations

EXHIBIT B

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-1045

30279

In re Applications of	)	MM DOCKET NO. 92-183
	)	
WESTERN INSPIRATIONAL BROADCASTERS, INC.	)	File No. BPED-910923MF
	)	
BROAD SPECTRUM COMMUNICATIONS, INC.	)	File No. BPH-910925ME
	)	
PHOENIX BROADCASTING, INC.	)	File No. BPH-910926ME
	)	
NINETY-TWO SEVEN, LTD.	)	File No. BPH-910926MF
	)	
For Construction Permit for a New	)	
FM Station on Channel 224A in	)	
Chico, California	)	

MEMORANDUM OPINION AND ORDER

Issued: November 16, 1992; Released: November 17, 1992

1. Under consideration are Joint Request for Approval of Settlement, filed September 8, 1992, supplemented October 2, 1992, by Western Inspirational Broadcasters, Inc., Broad Spectrum Communications, Inc., Phoenix Broadcasting, Inc. and Ninety-Two Seven, Ltd.; Motion for Leave to Amend, filed September 8, 1992 by Phoenix Broadcasting, Inc.; Motion to Delete Contingent Environmental Issue, filed September 8, 1992 by Phoenix Broadcasting, Inc.; and Informal Objection, filed October 9, 1992 by Michael G. Barnes; and Motion to Strike, filed November 9, 1992 by Phoenix Broadcasting, Inc.

**Settlement Agreements**

2. Phoenix has agreed to reimburse Western's expenses up to \$5,000 in exchange for dismissing its application. Western has itemized expenses of \$2,208. In a second agreement, Phoenix, Spectrum, and Seven have agreed to merge their interests; each will own one-third of a new corporation, Chico FM, Ltd. Phoenix will control, however, with the right to name three of five directors. Three hundred sixty-seven days after Chico FM begins broadcasting on Channel 224A, Spectrum and Seven may exercise options that would result in payments to them for their Chico stock or a four percent interest in Phoenix, which owns two other stations. The cash payment would be based on the appraised value of the station at the time the option is exercised. The Bureau urges that the merger is legitimate and does not represent deferred cash payments to Spectrum and Seven by Phoenix because they will benefit only if the station is successful.



3. The Bureau has indicated that it is investigating Phoenix, which is currently a licensee, and it requests that a grant be made to Chico FM without prejudice to whatever action the Commission might take after the investigation is concluded. The Bureau's request will be granted. The settlement agreements will be approved.

4. Phoenix petitions for leave to amend its application to substitute the new name and ownership provided for in the settlement agreement. The amendment will be accepted. Phoenix petitions for leave to amend to provide an explanation of how it will protect workers from RF radiation. The Bureau's Audio Service Division has reviewed Phoenix's showing and requests that the contingent environmental issue against Phoenix be eliminated.

5. Michael G. Barnes has filed an informal objection to a grant of Phoenix's application. The Bureau has referred Barnes' objection to the Bureau's investigator. Barnes has not moved to intervene in the proceeding and, therefore, he has no right to be heard; only parties to hearings may participate. Moreover, issues in comparative hearings may only be raised with a petition to enlarge; no provision is made in the Commission's hearing rules for nonparty comments. Barnes' informal objection will be dismissed.

ACCORDINGLY, IT IS ORDERED that the joint request for approval of settlement, filed September 8, 1992, supplemented October 2, 1992 by Western Inspirational Broadcasters, Inc., Broad Spectrum Communications, Inc., Phoenix Broadcasting, Inc., and Ninety-Two Seven, Ltd. IS GRANTED.

IT IS FURTHER ORDERED that the contingent environmental issue against Phoenix Broadcasting IS ELIMINATED.

IT IS FURTHER ORDERED that the petition for leave to amend, filed September 8, 1992 by Phoenix Broadcasting, Inc. IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the informal objection, filed October 9, 1992 by Michael G. Barnes IS DISMISSED.

IT IS FURTHER ORDERED that the motion to strike, filed November 9, 1992 by Phoenix Broadcasting, Inc. IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the application of Western Inspirational Broadcasters, Inc. (File No. BPED-910923MF) IS DISMISSED WITH PREJUDICE and that the applications of Broad Spectrum Communications, Inc. (File NO. BPH-910925ME) and Ninety-Two Seven, Ltd. (File No. BPH-910926MF) ARE DISMISSED WITH PREJUDICE and the petition to amend the application of Phoenix Broadcasting, Inc. (File No. BPH-910926ME) to change its ownership and name to Chico FM, Ltd. IS GRANTED and ACCEPTED and the application of Chico FM, Ltd. for a construction permit for a new commercial FM on Channel 224A at Chico, California IS GRANTED but conditioned on the outcome of the Mass Media Bureau's investigation of Phoenix and any action it might undertake to determine whether Phoenix is qualified to operate the Chico facility.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

*Edward J. Kuhlmann*  
Edward J. Kuhlmann  
Administrative Law Judge